IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: J U D G M E N T :

S.B. Criminal Appeal No.167/1988.
(Bhima Vs. State of Rajasthan)

DATE OF JUDGMENT : July 18, 2006

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Suresh Kumbhat and Mr. Jitendra Ojha for the appellant.
Mr. L.R. Upadhyay, P.P. for the State .

BY THE COURT :

The appellant, in this appeal, has been convicted for commission of offence under Section 376, I.P.C. read with Section 511, I.P.C. and sentenced to suffer rigorous imprisonment for four years and pay a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for 3 months by the Sessions Judge, Bhilwara vide judgment and order dated 16.02.1988 passed in Sessions Case No.126/1987.

Challenging the validity of the aforesaid judgment, learned counsel for the appellant vehemently argued that in this case the FIR was filed on 14.07.1987 at 1.30 P.M. by Raghunath Gurjar at Police Station Banera (Distt. Bhilwara) alleging that the appellant attempted to commit rape upon her daughter Ghisi. It is the case that as per the document filed by complainant Raghunath, the age of his daughter was

at the relevant time 13 years. The alleged occurrence as per the FIR was of 'poornima' dated 11.07.1987. It is stated by learned counsel for the appellant that the trial Court as per evidence found the age of the girl to be 17 years and age of the appellant to be between 19-20 years and allegation against the appellant is only that he attempted to commit rape. He contended that the learned Sessions Judge called for the report of the District Probation Officer with regard to the conduct and character of the appellant. In the said report, it is submitted, the District Probation Officer recommended that it is first offence of the appellant and, therefore, he can be given benefit of probation and a lenient view may be taken towards the appellant but, despite that, the trial Judge convicted the appellant and sentenced him as afore-noted.

In this case, the occurrence is said to have taken place on 11.07.1987 and the FIR was filed after three days, on 14.07.1987 and, as per the FIR, the incident was seen by an eye-witness Mst. Ramu, P.W.-4, wife of the brother of the prosecutrix. Learned counsel for the appellant argued that there is no explanation for this delay in filing the FIR though Mst. Ramu, P.W.-4 who is close relative of the prosecutrix, claims to have witnessed the incident. Likewise, it is also contended that the trial Court has not considered the recommendation of the District Probation Officer in right perspective. He has also contended that at the time of the incident, both the prosecutrix and the

appellant were teen-agers and the appeal is pending before this Court since 1988. He submitted that the appellant is enlarged on bail and he has already remained behind bars from 15.07.1987 to 14.09.1987; and, thereafter, again sent to judicial custody on 14.04.1988 at the time of conviction. His bail application for suspension of sentence was allowed by this Court on 23.05.1988; meaning thereby, the appellant has already remained behind bars for more than three months. Learned counsel for the appellant argued that in identical situation this Court, in the case of Milkha Singh Vs. State of Rajasthan, 1989 (1) RLW 577 reduced the sentence from 4 years to the sentence already undergone (3 months and 22 days) for similar offence. Learned counsel for the appellant urged that in the cited case the appeal was heard and decided within 12 years from the date of conviction whereas in the instant case the FIR was registered on 14.07.1987 and the case was decided on 16.02.1988, the appeal was filed before this Court in 1988 and we are running in the year 2006. In the cited case, he submitted, this Court observed that after 12 years of commission of the offence whether the accused should be sent to jail at this distance of time and, therefore, while maintaining the conviction, the sentence was reduced to the one already undergone.

I have perused the impugned judgment and carefully scanned the evidence on record. I have also gone through the judgment of this Court in Milkha Singh's case.

By a detailed discussion of the evidence led by the prosecution as well as defence, the learned trial Judge found cogent reasons for believing the prosecution story. In the case, the oral evidence of the prosecution witnesses is fully corroborated by the medical evidence and, therefore, there cannot be any ground to interfere with the finding of guilt arrived at by the learned trial Judge against the appellant. Hence, in the appeal, I do not find any merit to interfere with the conviction of the appellant. In this case, the appellant has been held guilty for attempting to commit rape upon the prosecutrix Mst. Ghisi. The offence is committed way back in the year 1987 and, after conviction of the appellant by the learned Sessions Judge, Bhilwara, this appeal filed in the year 1988 has remained pending decision for almost 18 years. The appellant remained behind bars from from 15.07.1987 to 14.09.1987; and, thereafter, again sent to judicial custody on 14.04.1988 at the time of conviction. His bail application for suspension of sentence was allowed by this Court on 23.05.1988. Thus he remain in jail for more than 3 months. At the time of commission of the offence the appellant was, as per the medical report, between 18-20 years and the learned trial Judge had also sent for the report from the District Probation Officer who recommended that it was the first offence committed by the appellant and appellant may be given benefit under Probation of Offenders Act. In fact, in the facts and circumstances of the case, had it been possible to

decide the appeal in 1988 itself the question of extending the benefit of probation under the Probation of Offenders Act would have been seriously considered by the Court. Now, after a lapse of almost 18 years, while maintaining the conviction of the appellant for offence under Section 376, I.P.C., read with Section 511, I.P.C., I feel inclined to follow the line adopted by this Court in the case of Milkha Singh (supra).

Accordingly, this appeal is partly allowed and it is ordered that the conviction of the appellant for offence under Section 376, I.P.C., read with Section 511, I.P.C. is maintained, however, the sentence awarded by the trial Court is reduced to the sentence already undergone by the appellant. The sentence of fine is affirmed. The appellant is on bail. His bail bonds shall stand discharged provided the appellant pays off the amount of fine.

(Gopal Krishan Vyas) J.

Ojha, a.